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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,777	01/22/2004	Rickey Martins		6115

7590 12/22/2005
Mr. Walter J. Tencza Jr.
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EXAMINER

GEHMAN, BRYON P

ART UNIT PAPER NUMBER

3728

DATE MAILED: 12/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

6

Office Action Summary	Application No. 10/762,777	Applicant(s) MARTINS, RICKEY	
	Examiner Bryon P. Gehman	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 13 October 2005.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-18 is/are rejected.
- 7) Claim(s) 17-20 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

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1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-8 and 10-18 are finally rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, line 10, "the pegboard" lacks antecedent basis, as the antecedent phrase "adapted to be ... of a pegboard" in lines 6-7 alludes to a capability relative to an imaginary pegboard, and defines no particular pegboard. In lines 15-16, the "substantially greater" definition is ambiguous as to meaning, as it could mean "quite a bit greater" or "just that it is greater". See also claim 6.

In claim 2, the functional recitation "can be placed on the extension" is indefinite, as no structure enabling this action to occur is defined, unless one considers the backings inherently pierceable at any point thereof and therefore inherently capable of having the packages placed on the extension with the backings in contact if impaled in such a manner. See also claim 7.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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4. Claims 1-3 are finally rejected under 35 U.S.C. 102(b) as being anticipated by Hardy (5,855,282). Claims 1-2 are finally rejected under 35 U.S.C. 102(b) as being anticipated by Herzog (4,104,817). Claims 1-4 are finally rejected under 35 U.S.C. 102(b) as being anticipated by Felkay (3,245,547). Each discloses an apparatus comprising a base (20; 10; described pegboard; respectively) having a front surface and an opposing rear surface, an extension (24; 14 or 16; 25A) attached to the front surface of the base, a first prong (42; 24; 29) attached to the rear surface and having a first tip, the first prong inserted into a hole of a pegboard and therefore adapted to be so, a second prong (42; 24; 30) attached to the rear surface and having a second tip, the second prong inserted into a hole of a pegboard and therefore adapted to be so, the prongs being spaced apart from each other and substantially parallel to each other, wherein the extension has first, second and third dimensions, each dimension perpendicular to the other two, wherein the first dimension is substantially greater than the second dimension and the second dimension is substantially greater than the third dimension, the extension extends outward from the front surface in the first dimension, the second dimension is substantially perpendicular to a line segment which includes the first tip of the first prong and the second tip of the second prong, and the third dimension is substantially parallel to the line segment.

As to claim 2, each discloses a pair of packages **capable of** being impaled on the extension so that the backings contact one another.

As to claim 3, in Hardy the packages will not rotate due to an additional hook (110) and in Felkay due to the shapes of the extension and receiving aperture of the package (see Figure 4).

As to claim 4, Felkay discloses a first slot (17) with a first elongated opening (vertical part of the defined cruciform shape) into which the extension can be inserted.

5. Claims 6-8 and 10-15 are finally rejected under 35 U.S.C. 102(b) as being anticipated by any one of Hardy, Herzog and Felkay. To merely provide the structure explained in the previous paragraph is also disclosed by those references, as explained above.

As to claim 7, each discloses a pair of packages **capable of** being impaled on the extension so that the backings contact one another.

As to claims 8, 12 and 14-15 Herzog discloses a printed tangible material (labels at 28 or 34) located along the second dimension of the extension, the printed tangible material identifying a product (by size). The choice of printed matter is not a patentable feature.

As to claim 10, Hardy and Felkay each disclose providing at least two packages on the extension, this provision of two packages as disclosed in most efficient use of the extension being such that the length taken up by the first and second packages **along the extension** is approximately equal to the depth of the enclosure of the first package plus the depth of the first backing plus the depth of the second backing (see Figure 2 of Hardy, the length of the extension 24 being taken up by two adjacent packages

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comprises a first backing depth, a depth of an enclosure and the second backing depth; see Figures 1 and 3 and imagine a second receptacle (11) similar to the first abutting the shown receptacle (11), again the length of the extension being taken up by two adjacent packages comprises a first backing depth, a depth of an enclosure and the second backing depth. Applicant only requires that it "can be placed" in line 2, not that it actually occurs.

As to claim 11, in Hardy the packages will not rotate due to an additional hook (110) and in Felkay due to the shapes of the extension and receiving aperture of the package (see Figure 4).

6. Claim 9 is finally rejected under 35 U.S.C. 102(b) as being anticipated by Dyble et al. (5,593,036). Claim 9 is finally rejected under 35 U.S.C. 102(b) as being anticipated by Segal (4,842,141). Each discloses an apparatus comprising a first package having an enclosure (22; 40; respectively) attached to a first backing (24; 10), wherein the first backing has a first slot (34; 160), a second slot (34; 162), a top (at 26; at numeral 22 in Figure 1), a bottom (at 28; perpendicular to the top at numeral 22 of Figure 1), a first side (at 22; at letter A in Figure 1) and a second side (opposite 22; at numeral 20 of Figure 1), wherein the slots are located nearer the first side than the second side and the slots are substantially parallel to the first side, wherein the first slot is located nearer the top (at 26; at numeral 22 in Figure 1) than the bottom and the second slot is located nearer the bottom (at 28; perpendicular to the top at numeral 22 of Figure 1) than the top, the slots being substantially the same size and adapted to have an extension

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inserted therethrough. The top, bottom and sides are arbitrary, as a package can be disposed in various dispositions.

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-4 and 16 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Segal in view of Hardy. Hardy has been explained above with respect to claim 1. As to claim 2, Segal discloses a pair of packages (see Figures 6 and 7) impaled on an extension so that the backings contact one another. To employ the packages of Segal on an apparatus as disclosed by Hardy would have been obvious, as both pertain to suspending packages from a display apparatus and the packages of one with the prong apparatus of the other would have been within the level of ordinary skill in the art to display the packages.

As to claim 3, in Segal and Hardy the packages will not rotate due to an additional hook.

As to claim 4, Segal discloses a first slot (160) with a first elongated opening into which the extension can be inserted.

As to claim 16, Segal discloses an apparatus comprising a first package having an enclosure (40) attached to a first backing (10), wherein the first backing has a first

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slot (160), a second slot (162), a top (at numeral 22 in Figure 1), a bottom (perpendicular to the top at numeral 22 of Figure 1), a first side (at letter A in Figure 1) and a second side (at numeral 20 of Figure 1), wherein the slots are located nearer the first side than the second side and the slots are substantially parallel to the first side, wherein the first slot is located nearer the top (at numeral 22 in Figure 1) than the bottom and the second slot is located nearer the bottom (perpendicular to the top at numeral 22 of Figure 1) than the top, the slots being substantially the same size and adapted to have an extension inserted therethrough. The top, bottom and sides are arbitrary, as a package can be disposed in various dispositions.

8. Claims 5 and 13 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claims 1 and 6 above, and further in view of one of Larson (3,483,995), Larson (3,638,801) and Hoefkes (5,026,011). Each of the newly cited references discloses an extension (40; 100; Figure 1) that projects downwards from the base and gradually curves upwards, with both Larson references and Hoefkes disclosing an elongated cross section of the extension. To modify the extension of the structure of any one of Hardy, Herzog and Felkay employing the extension arrangement of any one of Larson, Larson and Hoefkes would have been obvious in order to derive the disclosed extension advantages of any one of Larson, Larson and Hoefkes for the packages and extension arrangement of any one of Hardy, Herzog and Felkay.

9. Applicant's arguments with respect to claims 1-16 have been considered but are moot in view of the new ground(s) of rejection.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

11. Claim 19 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Dependent claim 20 would also then be allowable.

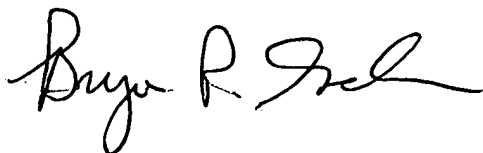
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12. Claim 17 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims. Dependent claim 18 would also then be allowable.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryon P. Gehman whose telephone number is (571) 272-4555. The examiner can normally be reached on Monday through Wednesday from 5:30am to 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu, can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Bryon P. Gehman
Primary Examiner
Art Unit 3728

BPG